



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

BAR 3743

#21

In re Application of: ADAMS et al.

Application No.: 09/817,278

Group Art Unit: 3743

Filed: March 27, 2001

Examiner: Ferko, K.

For: MULTI-MODE LIGHTER

Attorney Docket No.: 618-979

BRIEF ON APPEAL FEE TRANSMITTAL

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Assistant Commissioner for Patents
Washington, D.C. 20231

JAN 27 2003
TECHNOLOGY CENTER R3700

Sir:

An original and two copies of the applicant's Brief on Appeal in the above-entitled application are submitted herewith. The item(s) checked below apply:

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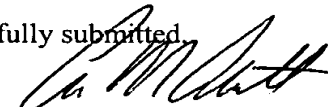
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Respectfully submitted,

Date January 21, 2003


For: Brian M. Rothery

Arthur M. Antonelli
For Brian M. Rothery

Reg. No. 51,410
Reg. No. 35,340

PENNIE & EDMONDS LLP
1667 K Street, N.W.
Washington, D.C. 20006
(202) 496-4400

Enclosures



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Sir:

Pursuant to the provisions of 37 C.F.R. § 1.191 and § 1.192, this is an appeal from the Examiner's final rejection dated September 17, 2002, which rejects claims 1-22 and 68-77 of the above-identified application. Appellants timely filed a Notice of Appeal on November 18, 2002. An original and two copies of this Brief are submitted herewith.

REAL PARTY IN INTEREST

The real party in interest is BIC Corporation, having a place of business at 500 BIC Drive, Milford, CT 06460. BIC Corporation is the assignee of the present invention by virtue of an assignment dated May 9, 2001 and recorded at Reel 011787, Frame 0046.

RELATED APPEALS AND INTERFERENCES

Appellants and their legal representatives hereby submit that they are not aware of any appeal or interference which directly affects, will be directly affected by, or will have a bearing on the Board's decision in this appeal.

STATUS OF THE CLAIMS

Claims 1-77 of this application are pending in this application. Claims 22-67 stand allowed. Claims 1-21 and 68-77 stand rejected and are the subject of this appeal. The appealed claims are presented in Appendix A attached hereto.

STATUS OF AMENDMENTS

An amendment filed November 18, 2002, requesting entry of formal drawings and remarks into the file of the above-identified application, was entered by the Examiner, who stated in an Advisory Action that the request for reconsideration has been considered but does not place the application in condition for allowance because the claims have not been amended to overcome the rejection.

SUMMARY OF THE INVENTION

The invention as recited by claims 1-21 is directed to a lighter having a moveable wand assembly. (*See* specification, 2:9). The lighter includes a housing having a supply of fuel, an actuating member moveable to selectively ignite the fuel, and a moveable wand assembly. (*Id.*, 2:9-11). According to one embodiment, the wand assembly may be operatively associated with the actuating member such that when the wand assembly is in a first position the wand assembly is capable of causing the actuating member to be immobilized sufficiently to prevent ignition of the fuel. (*Id.*, 2:11-14). (*See also, Id.*, 16:5-15).

The invention as recited by claims 68-77 is directed to a lighter having an ignition assembly for igniting fuel, an actuator member operable to selectively actuate the ignition assembly, a wand assembly, and a conduit for transporting fuel from the supply to the nozzle of the wand assembly. (*Id.*, 4:11-13). The conduit contains a lead from the ignition assembly for igniting fuel at the nozzle. (*Id.*, 4:13-18). (*See also, Id.*, 22:27-32 to 23:1-7).

ISSUES PRESENTED ON APPEAL

- A. Whether the Examiner's rejection of claims 1-21 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,199,865 to Liang et al. ("Liang") is proper; and
- B. Whether the Examiner's rejection of claims 68-77 under 35 U.S.C. § 102(a) or 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,213,759 to Sung ("Sung") is proper.

GROUPING OF CLAIMS

For the purpose of this appeal and without prejudice to showing the patentability of the dependent claims, the claims are grouped as follows:

- Independent claim 1 and dependent claims 2-6, 17, 18, 20 and 21 stand or fall together;
- Dependent claims 7-8 stand or fall together;
- Dependent claims 9-16 and 19 stand or fall together;
- Independent claim 68 and dependent claims 69-71 and 74 stand or fall together;
- Dependent claims 72-73 stand or fall together; and
- Dependent claims 75-76 stand or fall together;

ARGUMENT

A. Claims 1-21 are not anticipated by Liang.

Independent claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by Liang. The Examiner stated:

“Liang clearly discloses a lighter having . . . a moveable wand assembly . . . capable of causing the actuating member to be immobilized sufficiently to prevent ignition of the fuel, as recited in column 2. When the wand is in the closed position, actuation is sufficiently prevented.”

Independent claim 1 recites, *inter alia*, a lighter comprising a housing having a supply of fuel, an actuating member moveable to selectively ignite the fuel, and a moveable wand assembly operatively associated with the actuating member such that when the wand assembly is in a first position, the wand assembly is capable of causing the actuating member to be immobilized sufficiently to prevent ignition of the fuel. For the reasons which follow, Applicants respectfully submit that Liang does not anticipate independent claim 1.

1. Liang does not show each and every element of claim 1.

Liang does not disclose, show, suggest or teach a moveable wand assembly “operatively associated with the actuating member such that when the wand assembly is in a first position, the wand assembly is capable of causing the actuating member to be immobilized sufficiently to prevent ignition of the fuel,” as required by claim 1. As disclosed

in the figures and specification of Liang: FIG. 1 illustrates the preferred embodiment of the foldable safety lighter of Liang. (Liang, FIG.1, 1:44-45); FIGS. 2-6 disclose the structure and operation of the rotating lighter nozzle. (*Id.*, FIGS. 2-6, 1:46-58); and, FIGS. 7-8 disclose the safety control mechanism of the Liang lighter. (*Id.*, FIGS. 7-8, 1:59-62). The control knob 3 is not shown in FIGS. 2-6, and the control knob 3 is not referred to in the section of the specification describing FIGS 1-6. (*Id.*, FIGS. 2-6; 1:66-2:28). Similarly, the rotating nozzle of Liang is not shown in FIGS. 7-8, and the rotating nozzle is not described in connection with the control knob 3 or safety locking mechanism. (*Id.*, FIGS. 7-8, 2:29-3:49). Liang does disclose a control knob 3 having a projecting strip 34, which is engagable in a retaining groove 162 when rotated toward the stop strip 163 for “inhibiting the push-type control.” (*Id.*, 2:35-39). When the control knob is moved to the stop strip 163, the control knob is prohibited from being pressed down; when the projecting strip is moved away from the stop strip 163 to a predetermined position, the control knob is permitted to be pressed down. (*Id.*, 2:39-45). Thus, while Liang discloses a mechanism to prohibit the control knob from being operated, there is no disclosure, showing, suggestion or teaching that the rotating nozzle of Liang is (1) operatively associated with the control knob mechanism, or (2) that the rotating nozzle is capable of causing the control knob to be immobilized sufficiently to prevent ignition of the fuel. The rotating nozzle of Liang, rather, is independent of the operation of the control knob mechanism for igniting the fuel.

2. The Examiner’s interpretation of Liang does not meet the requirements of claim 1.

The Examiner’s reason for rejecting claim 1-- (i.e., that “[w]hen the wand is in the closed position, actuation is sufficiently prevented”) -- is unsubstantiated and contrary to the meaning of the term immobilized. Claim 1 requires that the wand assembly be capable of causing the actuating member to be immobilized sufficiently to prevent ignition of the fuel. It is improper for the Examiner to ignore the immobilizing requirement in rejecting claim 1. “Immobilize” according to the American Heritage Dictionary, Third Edition, is defined as “to render immobile; fixed,” while, “immobile” is defined as “immoveable; fixed.” (Exhibit 1). As characterized by the Examiner, the rotating nozzle of Liang, when folded, blocks a user’s access to the control knob so that “actuation is sufficiently prevented.” While Liang itself states nothing about the rotating wand as blocking a user’s access to the control knob (Liang

states that the wand is rotatable to reduce space (*Id.*, 1:29-32)), even under the Examiner's contrived characterization, the rotating nozzle of Liang does not have the ability to render the control knob substantially immovable, as required by claim 1. In other words, Liang does not have the ability to cause the control knob to be fixed sufficiently to prevent ignition of the lighter as required by claim 1. Accordingly, the Examiner's interpretation of the so-called inherent disclosure of Liang fails to meet all the limitations of claim 1.

3. Claim 1 is not vague and indefinite.

The Examiner has also taken the position that the recitation of claim 1 requiring a "wand assembly capable of causing the actuating member to be immobilized sufficiently to prevent ignition of the fuel" is "vague and broad terminology," which allows claim 1 to be reasonably interpreted to read on the lighter assembly of Liang. While the language of claim 1 is intended to be broad, the Examiner's position is incorrect as even the broadest interpretation does not permit the Examiner to eliminate the term "immobilized" from claim 1. In addition, Applicants respectfully submit that the Examiner's rationale is not a permissible basis for rejecting claim 1. First, 35 U.S.C. § 112, second paragraph, is the only appropriate basis for rejecting a claim that the Examiner believes to be vague. No such rejection was made by the Examiner with regard to claim 1, as the claim is sufficiently definite. Second, claim terms such as "capable of causing" and "sufficiently" have clear meaning as shown by the dictionary definitions presented and adopted herein¹. As the meaning of these terms are inconsistent with the Examiner's position, Liang does not anticipate claim 1, because each and every element recited in claim 1 is not disclosed, taught or suggested in Liang.

4. Dependent claims 2-21.

With respect to claims 2-21 which depend from independent claim 1, Applicants respectfully submit that because these claims define more particular aspects of

¹ The American Heritage Dictionary, Third Edition, includes the following definitions which are incorporated herein:

- capable - having capacity or ability;
- cause - the producer of an effect, result or consequence;
- causing - To be the cause of or reason for; and
- sufficiently - being as much as is needed.

Applicants' invention in addition to the features and elements of independent claim 1, these claims are also patentably distinct from Liang for the same reasons as claim 1.

With respect to claims 7-8 which depend from independent claim 1, Applicants respectfully submit that Liang also fails to disclose, teach or suggest an actuating member which "is slidable" as required by claim 7.

With respect to claims 9-16 and 19 which depend from independent claim 1, Applicants respectfully submit that Liang also fails to disclose, teach or suggest "a cam follower operatively associated with the housing and including a first portion for interacting with the wand assembly and a second portion for interacting with the actuating member" as required by claim 9.

B. Claims 68-77 are not anticipated by Sung.

Independent claim 68 was rejected under 35 U.S.C. § 102(a or e) as being anticipated by U.S. Patent No. 6,213,759 to Sung ("Sung"). The Examiner stated:

"Sung clearly discloses. . . a conduit 28 for transporting fuel to the nozzle [16] . . . wherein the conduit contains a lead from the ignition assembly for igniting fuel at the nozzle, as seen in figure 2."

Independent claim 68 recites a lighter comprising, *inter alia*, a housing assembly having a supply of fuel, a wand assembly associated with the housing assembly and having a nozzle, a conduit for transporting fuel from the supply to the nozzle wherein the conduit contains a lead from the ignition assembly for igniting fuel at the nozzle.

1. Sung does not show each and every element of claim 68.

As shown in FIG. 2 and described in the specification of Sung:

"Disposable utility lighter 10 is conventional in construction and operation as shown in FIG. 2, and is comprised of a fluid reservoir 26, providing fluid through tube 28 to nozzle tip 16, which is ignited by a spark at spark gap 30. Fluid is released to nozzle tip 16 by trigger 18, engaging lever 34 to open valve 36, allowing fluid to flow from fluid reservoir 26 through tube 28 to nozzle tip 16. Nearly simultaneously, trigger 18 activates spark generator 25 to generate a spark at spark gap 30. This construction is conventional in nearly all disposable utility lighters." (Sung, 5:8-17).

As shown in FIGS 2-4 of Sung, tube 28 does not “contain” a lead from the ignition assembly for igniting fuel at the nozzle. As best shown in FIG. 4, spark generator 25 appears to electrically connect with two conductive elements for creating a spark at the spark gap 30. A marked-up version of FIGS 2-4 is provided as Appendix B, which shows the spark generator 25; the two electrical leads emanating from the spark generator; and the tube 28 for delivering fuel from the fuel supply 26 to the nozzle tip 16. As illustrated by the marked-up version of FIGS. 2-4, Sung shows, without question, a conduit for transporting fuel to the nozzle, and an electrical circuit for igniting fuel at the nozzle that is not contained in the fuel conduit. The American Heritage Dictionary, Third Edition, defines “contain” as “to have within; hold.” Thus, Sung fails to disclose, teach or suggest a conduit for transporting fuel from the supply to the nozzle, wherein the conduit has as part of or within its construction or which otherwise holds a lead for igniting fuel at the nozzle as required by independent claim 68. There is no lead from the ignition assembly for igniting fuel at the nozzle within the conduit of the lighter disclosed in Sung. Accordingly, Applicants respectfully submit that Sung does not anticipate independent claim 68, and that the rejection of independent claim 68 should be withdrawn.

2. Dependent claims 69-77.

With respect to claims 69-74, which depend from independent claim 68, Applicants respectfully submit that because these claims define more particular aspects of Applicants’ invention in addition to the features and elements of independent claim 68, these claims are also patentably distinct from Sung for the same reasons as claim 68.

With respect to claims 72-73 which depend from independent claim 68, Applicants respectfully submit that Sung also fails to disclose, teach or suggest a wand assembly comprising a wand wherein, “the conduit and the lead allow the wand to move with respect to the housing,” as required by claim 72.

With respect to claims 75-76 which depend from independent claim 68, Applicants respectfully submit that Sung further fails to disclose, teach or suggest a lighter capable of selectively releasing fuel from the nozzle and actuating the ignition assembly in first and second modes, wherein “the first mode requires an operator to apply a first force to the actuating member. . . and the second mode requires the operator to apply a second force to

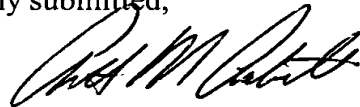
the actuating member in order to selectively release fuel from the nozzle and actuate the ignition assembly," as required by claim 75.

CONCLUSION

As the features and elements recited in claims 1-21 are not disclosed, suggested or taught by Liang, and the features and elements recited in claims 68-77 are not disclosed, suggested or taught by Sung, Applicants respectfully submit that the final rejections of claims 1-21 and 68-77 are in error and should be reversed.

No fee is believed to be due for this submission. Should any fees be required, however, please charge such fees to Pennie & Edmonds LLP Deposit Account No. 16-1150.

Respectfully submitted,



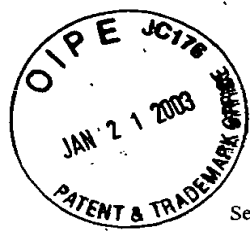
Date January 21, 2003

For: Brian M. Rothery

Arthur M. Antonelli Reg. No. 51,410
For: Brian M. Rothery Reg. No. 35,340

PENNIE & EDMONDS LLP
1667 K Street, N.W.
Washington, DC 20006
(202) 496-4400

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Filed: March 27, 2001

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Inventor: P. ADAMS *et al.*

Date: 1/21/03

For: MULTI-MODE LIGHTER

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APPENDIX A
CLAIMS SUBJECT TO APPEAL

Claims pending in the application: 1-77

Claims allowed: 22-67

Claims rejected and subject to appeal: 1-21 and 68-77

1. (Amended) A lighter comprising:
a housing having a supply of fuel;
an actuating member moveable to selectively ignite the fuel, the actuating member associated with the housing; and
a moveable wand assembly associated with the housing and operatively associated with the actuating member such that when the wand assembly is in a first position, the wand assembly is capable of causing the actuating member to be immobilized sufficiently to prevent ignition of the fuel.
2. The lighter of claim 1, wherein when the wand assembly is in at least one second position, the actuating member is moveable sufficiently to ignite the fuel.
3. The lighter of claim 2, wherein when the wand assembly is positioned between the first and second positions, the actuating member is moveable sufficiently to ignite the fuel.
4. The lighter of claim 2, wherein when the wand assembly is positioned between the first and second positions, the actuating member is immobilized sufficiently to prevent ignition of the fuel.



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5. The lighter of claim 1, wherein the actuator member is substantially immobilized when the wand assembly is in the first position.
6. The lighter of claim 1, wherein the wand assembly is pivotally coupled to the housing.
7. The lighter of claim 1, wherein the actuating member is slidable.
8. The lighter of claim 7, wherein when the wand assembly is in the first position, the actuating member is at least partially prevented from sliding.
9. The lighter of claim 1, further comprising a cam follower operatively associated with the housing and including a first portion for interacting with the wand assembly and a second portion for interacting with the actuating member.
10. The lighter of claim 9, wherein the wand assembly includes a camming surface and the cam follower first portion interacts with the camming surface.
11. The lighter of claim 9, wherein when the wand assembly is in the first position, the cam follower second portion immobilizes the actuating member sufficiently to prevent ignition of the fuel.
12. The lighter of claim 9, wherein when the wand assembly is in a second position, the cam follower second portion allows the actuating member to move sufficiently to ignite the fuel.



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13. The lighter of claim 9, wherein movement of the wand assembly causes the camming surface to move the cam follower.

14. The lighter of claim 10, wherein the camming surface defines a first detent for engaging the cam follower first portion when the wand assembly is in the first position.

15. The lighter of claim 14, wherein the camming surface further defines a second detent spaced from the first detent for providing resistance against movement of the wand assembly, and the cam follower first portion engages the second detent when the wand assembly is in the second position.

16. The lighter of claim 15, wherein the first position is a closed position and the second position is an extended position, and the camming surface further defines at least one additional detent between the first and second detents for engaging the cam follower first portion when the wand assembly is in at least one intermediate position between the first and second positions.

17. The lighter of claim 1, wherein the actuator member is a trigger.

18. The lighter of claim 1, wherein the actuating member is part of an actuating assembly.

19. The lighter of claim 10, wherein the cam follower is biased toward the camming surface.

20. The lighter of claim 1, wherein when the wand assembly is in the first position, the actuating member is immobilized sufficiently to prevent release of the fuel.



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21. The lighter of claim 1, wherein when the wand assembly is in the first position, the actuating member is immobilized sufficiently to prevent creation of a spark.

68. A lighter comprising:
a housing assembly having a supply of fuel;
a wand assembly associated with the housing assembly and having a nozzle;
a conduit for transporting fuel from the supply to the nozzle;
an ignition assembly for igniting fuel at the nozzle; and
an actuating member operable to selectively release fuel from the nozzle and actuate the ignition assembly,
wherein the conduit contains a lead from the ignition assembly for igniting fuel at the nozzle.

69. The lighter of claim 68, wherein the lead operably connects a first electrode to a first part of the ignition assembly; and a second lead operably connects a second electrode to a second part of the ignition assembly for generating an electrical arc between the electrodes.

70. The lighter of claim 69, wherein the first electrode comprises the nozzle.

71. The lighter of claim 69, wherein the second electrode comprises a tab on the wand assembly.

72. The lighter of claim 68, wherein the wand assembly comprises a wand, and the conduit and the lead allow the wand to move with respect to the housing assembly.



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Date: 1/21/03

For: MULTI-MODE LIGHTER

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73. The lighter of claim 72, wherein the wand is capable of moving with respect to the housing assembly.

74. The lighter of claim 68, wherein the actuating member is capable of selectively releasing fuel from the nozzle and actuating the ignition assembly in first and second modes.

75. The lighter of claim 74, wherein the first mode requires an operator to apply a first force to the actuating member in order to selectively release fuel from the nozzle and actuate the ignition assembly, and the second mode requires the operator to apply a second force to the actuating member in order to selectively release fuel from the nozzle and actuate the ignition assembly.

76. The lighter of claim 75, wherein the first force is greater than the second force.

77. The lighter of claim 76, wherein the second mode requires the operator to activate a second trigger.

APPENDIX B
Marked up Version of Sung FIGS. 2-4

